FILE COPY

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 502

FOREMAN'S ASSOCIATION OF AMERICA,
Petitioner,

vs.

L. A. YOUNG SPRING & WIRE CORPORATION and NATIONAL LABOR RELATIONS BOARD

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

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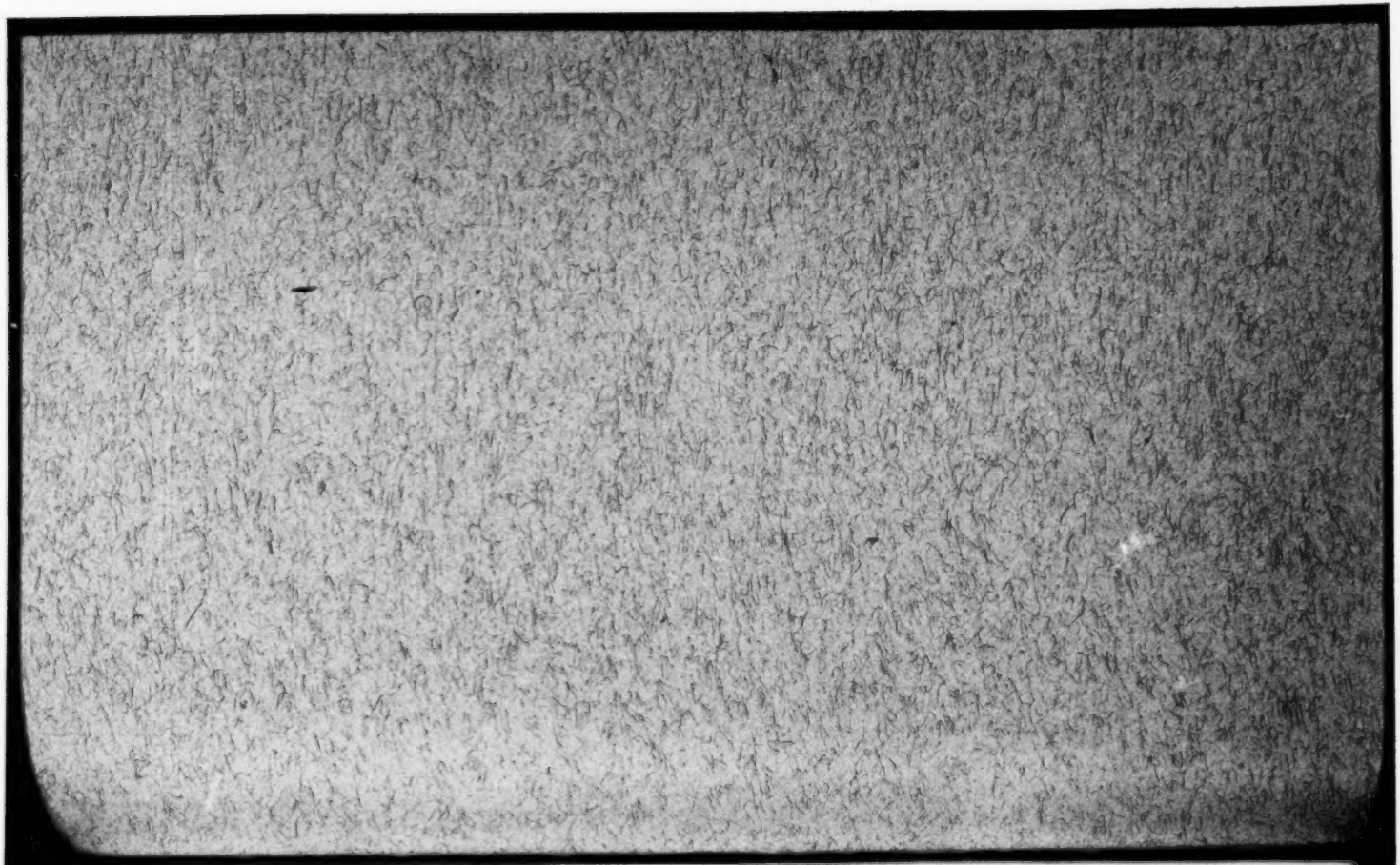

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OPINION BELOW

The United States Court of Appeals for the District of Columbia denied petitioner's motion for leave to intervene in the suit of *L. A. Young Spring & Wire Corporation v. National Labor Relations Board*, 163 F. (2d) 905 (App. D.C., 1947), (No. 9397, October Term, 1947).

QUESTION PRESENTED

Whether the United States Court of Appeals for the District of Columbia abused its discretion by denying petitioner's motion to intervene in an action brought by *L. A. Young Spring & Wire Corporation v. National Labor Relations Board* seeking to have a Board order against the Corporation set aside, where the petitioner's motion was not made until after judgment, but could have been made at any time prior thereto, and petitioner further sought to inject new issues into the aforesaid action between the Corporation and the National Labor Relations Board.

STATEMENT

L. A. Young Spring & Wire Corporation petitioned the United States Court of Appeals for the District of Columbia to review and set aside an order of the National Labor Relations Board which directed the Corporation to bargain collectively with the petitioner (R. 2-13). The Board answered and the cause was heard on May 28, 1947 (R. 14-19, 226).

Before judgment, which was rendered September 29, 1947, the Labor Management Relations Act was enacted on June 23, 1947 (R. 230, P.L. No. 101, 80th Cong., First Sess., CH 120, Sec. 104). Only after judgment had been rendered did petitioner, on October 14, 1947, move for leave to intervene at the same time seeking to inject issues of interpretation and constitutionality of the Labor Management Relations Act into the action (R. 231-4). Petitioner's motion was denied by the United States Court of Appeals for the District of Columbia (R. 235).

ARGUMENT

In *Brotherhood of Railroad Trainmen v. Baltimore & Ohio Railroad Co.*, 91 L. Ed. 1301 (Adv. Ops.), this Court said:

> "Our jurisdiction to consider an appeal from an order denying intervention thus depends upon the nature of applicant's right to intervene. If the right is absolute, the order is appealable and we may judge it on its merits. But if the matter is one within the discretion of the trial court and if there is no abuse of discretion, the order is not appealable and we lack power to review it. In other words, our jurisdiction is identified with the necessary incidents of the right to intervene in each particular instance."

The sole question presented for review by this Court is whether or not the Court of Appeals for the District of Columbia abused its discretion in denying petitioner's application for intervention. *Cameron v. President and Fellows of Harvard College*, 157 F. (2d) 993, (CCA 1, 1946).

In *United States v. California Co-op Canneries*, 279 U.S. 553, 49 Sup. Ct. 553, 73 L. Ed. 838, this Court stated that it was a "settled rule of practice that intervention will not be allowed for the purpose of impeaching a decree already made." (73 L. Ed. 841; 279 U.S. 556). Moreover, it has frequently been said that petitions for intervention, after a decree has been rendered, are very unusual and are seldom granted. *Baltimore Trust Co. v. Interocean Oil Co.*, 30 F. Supp 484 (D.C. Md., 1939), and cases cited therein.

Despite the petitioner's statement to the contrary (p. 2 of petitioner's petition), it is obvious that application for leave to intervene could have been made before judgment in this

cause either before or after the Labor Management Relations Act of 1947 was enacted (p. 5 of petitioner's petition). Certainly, it is difficult to conceive how a court could be said to have abused its discretion in refusing to allow one to come in and inject new issues in a case after judgment has been rendered. Nor has the petitioner cited any authority to sustain its contention that the denial of such an application constitutes an abuse of discretion.

It is a well established principle that intervention will not be allowed where it would unduly delay or prejudice the adjudication of the issues between the original parties. 6. Cyclopedia of Federal Procedure, Sec. 2388. Here, the controversy between L. A. Young Spring & Wire Corporation and the National Labor Relations Board has terminated in a judgment. To permit petitioner to intervene at this stage would obviously conflict with this principle.

Since petitioner has failed to show an abuse of discretion of the Court of Appeals for the District of Columbia, this Court lacks jurisdiction to entertain this appeal. *United States v. California Co-op Canneries,* 279 U.S. 553, 49 Sup. Ct. 553, 73 L. Ed. 838; *Missouri-Kansas Pipe Line Company v. United States,* 108 F. (2d) 614 (CCA 3, 1939) Cert. Den. 309 U.S. 687, 60 Sup. Ct. 887, 84 L. Ed. 1030; *Re Leaf Tobacco Board of Trade,* 222 U.S. 578, 32 Sup. Ct. 833, 56 L. Ed. 323.

CONCLUSION

For the above reasons, it is respectfully submitted that petitioner's petition for a writ of certiorari should be denied.

BETHEL B. KELLEY,
Attorney for L. A. Young Spring & Wire Corporation.

Dated: January 21, 1948.